

UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS

CARLOS AGUIAR
Plaintiff

Vs.

LIMA AND CURA FISHING
CORPORATION.
Defendant

Civil Action No. 04-12011-MLW

PLAINTIFF'S MOTION TO STRIKE EXHIBIT "B"
TO DEFENDANT LIMA & CURA FISHING CORPORATION'S MEMORANDUM IN
SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Now comes the Plaintiff in the above captioned matter and pursuant to F.R.Civ.P. 56 respectfully requests that this Honorable Court strike from consideration Exhibit "B" to Defendant Lima & Cura Fishing Corporation's Memorandum in Support of its Motion for Summary Judgment.

As grounds thereof the Plaintiff states that F.R.Civ.P. 56 requires that evidence submitted in support of Motions for Summary Judgment be verified by being under oath, by affidavit, by deposition or in an otherwise form admissible at trial. Here Exhibit "B" identified as the "Transcribed Statement of Carlos Aguiar" is not in its original form, is not under oath, is not signed by Mr. Aguiar and has not in anyway been verified as accurate or complete. In so far as it is a transcription (i.e. what a secretary says the tape says) of what appears to be a tape recording it is hearsay. Plaintiff has requested that the original tape from which the transcription appears to have been made, however the Defendant has never produced it.

Wherefore, the Plaintiff respectfully requests that pursuant to F.R.Civ.P. 56, that this Honorable Court Strike from consideration Ex. "B" of Defendant Lima & Cura Fishing Corporation's Memorandum in Support of its Motion for Summary Judgment.

Respectfully Submitted on
behalf of the Plaintiff Carlos Aguiar,
by his attorney,

/s/ David F. Anderson, Esq.
David F. Anderson
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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the within document with the Clerk of the Court using the CM/ECF system which will send notification of such filing(s) to all counsel of record.

/s/ David F. Anderson, Esq.
David F. Anderson, Esq.
Latti & Anderson LLP
30-31 Union Wharf
Boston, MA 02109
617-523-1000

Dated: